

THIS INSTRUMENT HAS BEEN EXECUTED

IN.....18.....COUNTERPARTS, OF WHICH RECORDATION NO. 8298/C Filed & Recorded

THIS IS COUNTERPART NO.....7.....

APR 22 1976 - 10 30 AM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT dated as of April 1, 1976 (hereinafter called the Assignment), by and between BIRMINGHAM TRUST NATIONAL BANK (hereinafter called the Lessor or the Vendee) not in its individual capacity but solely as Trustee under the Owner Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with SCHULER INDUSTRIES, INC. (hereinafter called the Beneficiary) and THE WESTERN SAVING FUND SOCIETY OF PHILADELPHIA, (hereinafter called the Vendor or the Investor).

WHEREAS, the Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documentation) with FMC CORPORATION (hereinafter called the Builder), providing for the sale to the Vendee of such units of railroad equipment (hereinafter called the Units) described in the Annexes thereto as are delivered to and accepted by the Vendee thereunder;

WHEREAS, the Lessor and SSI Rail Corp. (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documentation), the Lessor agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor as Vendee under the Security Documentation, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated

damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documentation and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date or, upon written request of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of Section 3 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Agreement shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor. Except to the extent provided herein, this Assignment shall not affect or modify the liability of the Lessor or the Lessee under the Lease.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the

obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Lessor under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. The Lessor will pay and discharge any and all claims, liens, charges or security interests (other than created by the Security Documentation) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor, or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the Security Documentation or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's interest therein, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

7. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the Commonwealth of Pennsylvania, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the Security Documentation, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the Security Documentation or an Event of Default under the Lease (as defined therein) has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment and which are for the sole benefit of the Lessor, without the prior consent of the Lessor. If an event of default under the Security Documentation shall occur and be continuing, the Lender may apply all Payments against the amounts due and payable under the Security Documentation and may otherwise enforce all the rights and remedies of the Lessor under the Lease and apply all proceeds from such exercise against the amounts due and payable under the Security Documentation.

12. The Vendee does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Assignment shall remain in effect, any of its right, title or interest in or to the Lease to anyone other than the Vendor, its successors or assigns, and that it will not take or omit to take any action, the taking or omission of which might result in an alteration, amendment, modification or impairment of the Lease or this Assignment or of any of the rights created by any of such instruments except as expressly provided in the Lease. The Vendee does hereby ratify and confirm the Lease and does warrant and represent that the Lease is in full force and effect as to the Vendee, and that the Vendee is not in default thereunder.

13. The Vendee shall cooperate with the Vendor in filing and recording this Assignment with the Interstate Commerce Commission in compliance with Section 20c of the Interstate Commerce Act.

14. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each of and all the representations, covenants, undertakings and agreements herein made on the part of the Owner Trustee are made and intended not as personal representations, covenants, undertakings and agreements by Birmingham Trust National Bank for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of

binding the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by said bank not in its own right but solely in the exercise of the powers expressly conferred on it as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank on account of this Assignment or on account of any representations, covenants, undertakings or agreements of the Owner Trustee. The provisions of this paragraph shall inure to the benefit of any successor trustee under the Trust Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE WESTERN SAVING FUND SOCIETY OF  
PHILADELPHIA

By John W. Gale  
Vice President

[Seal]

Attest:

C. B. Brown  
Authorized Officer

BIRMINGHAM TRUST NATIONAL BANK,  
not in its individual capacity  
but solely as Owner Trustee

By Carl B. Hunt  
Authorized Officer

[Seal]

Attest:

Michael R. Lee  
Authorized Officer

STATE OF PENNSYLVANIA, )  
 ) ss.  
COUNTY OF PHILADELPHIA. )

On this 21<sup>st</sup> day of April, 1976, before me personally appeared JOHN W. YANCY, to me personally known, who, being by me duly sworn, says that he is the VICE Pres. of THE WESTERN SAVING FUND SOCIETY OF PHILADELPHIA, that one of the seals affixed to the foregoing instrument is the corporate seal of said company and that said instrument was signed and sealed on behalf of said company by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

Dante M. Cirelli  
NOTARY PUBLIC in and for the State  
of Pennsylvania residing at  
Broad & Chestnut Sts

[Notarial Seal]  
My Commission expires

DANTE M. CIRELLI  
Notary Public, Philadelphia, Philadelphia Co.  
My Commission Expires April 16, 1977

STATE OF ALABAMA, )  
 ) ss.  
COUNTY OF JEFFERSON. )

On this 19<sup>th</sup> day of April, 1976, before me personally appeared CAHL B. SMITH, to me personally known, who, being by me duly sworn, says that he is the an authorized officer of BIRMINGHAM TRUST NATIONAL BANK, a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said association and that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Bennett M. Skelton  
NOTARY PUBLIC in and for the State  
of Alabama residing at P.O. Box 2554  
Birmingham Ala 35203

[Notarial Seal]  
My Commission expires  
MY COMMISSION EXPIRES OCTOBER 29, 1978

SCHEDULE C TO LEASE

CERTIFICATE OF ACCEPTANCE

This CERTIFICATE OF ACCEPTANCE, dated as of \_\_\_\_\_, 1976, executed and delivered by SSI RAIL CORP., a Delaware corporation (hereinafter called Lessee), to BIRMINGHAM TRUST NATIONAL BANK, not in its individual capacity but solely as Trustee under Owner Trust Agreement dated April 1, 1976 (hereinafter called the Lessor).

W I T N E S S E T H :

WHEREAS, Lessor and Lessee have heretofore entered into that certain Lease dated as of April 1, 1976 (herein called the Lease and the terms defined therein being hereinafter used with the same meaning), which Lease provides for the execution and delivery from time to time of Certificates of Acceptance substantially in the form hereof for the purposes of confirming acceptance of the Units of Equipment leased under the Lease;

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, Lessee hereby confirms and agrees as follows:

1. Lessee hereby after a full inspection accepts and leases from Lessor under the Lease, the Units of Equipment which are described below.

Equipment

Lessee's or Sublessee's Road Numbers

2. The acceptance date of the Units of Equipment is the date of this Certificate of Acceptance set forth in the opening paragraph hereof.

3. Lessee hereby confirms to Lessor that the Units of Equipment have been duly inspected in accordance with the Lease and duly marked in accordance with the terms of Section 5 of the Lease and that Lessee has accepted the Units of Equipment for all purposes hereof and of the Lease; provided, however, that nothing contained herein or in the Lease shall in any way diminish or otherwise affect any right which Lessee or Lessor may have with respect to the Units of Equipment under and pursuant to the warranties given by the Vendor in the Conditional Sale Agreement.

IN WITNESS WHEREOF, Lessee has caused this Certificate of Acceptance to be duly executed as of the day and year first above written.

SSI RAIL CORP., as Lessee

By \_\_\_\_\_  
(Title)